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MEMO ENDORSED

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By ECF

November 3, 2020

Honorable Kenneth M. Karas
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, NY 10601

Re: United States v. Joaquin Thatcher
13 Cr. 847 (KMK)

Dear Judge Karas:

This letter is respectfully submitted to provide Your Honor with some updated information concerning Mr. Thatcher's request for compassionate release.

Subsequent to the filing of Thatcher's motion for compassionate release, the Second Circuit decided *United States v. Brooker*, No. 19-3218-CR, 2020 WL 5739712 (2d Cir. September 25, 2020,) which found that Guideline § 1B1.13 is outdated and does not apply to requests for compassionate release that are brought directly to the court by a defendant and that Guideline § 1B1.13 and the relevant Application Notes do not limit Your Honor's discretion in deciding this motion.

The conditions at Fort Dix have deteriorated significantly recently. On September 11, 2020, the BOP's website indicated that 452 inmates had been tested, 5 inmate tests were pending and that 34 inmates had tested positive for COVID-19. In their reply submission, the Government stated that there were no COVID cases at Fort Dix. On October 28, 2020, the Government informed Judge Furman that there were then 58 positive cases in the low security prison at Fort Dix where Mr. Thatcher is housed. See, *United States v. Avery*, 14 Cr. 810 (JMF), document # 538, page 4, October 28, 2020. According to the BOP's website, as of today 1,121 (approximately 50% of the inmates in

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the facility) have been tested, 33 tests are pending and 339 inmates have tested positive for COVID-19.¹

According to press reports, this increase in COVID-19 cases is due, at least in part, to the BOP decision to transfer inmates from FCI Elkin, which had been devastated by COVID-19, to Fort Dix. See front page article from The Star Ledger, November 2, 2020, edition, attached as Exhibit A.

The increase in COVID cases at Fort Dix and the concordant increase risk of exposure, infection and serious medical consequences to Mr. Thatcher are not a matter of chance or bad luck. The exponential increase in inmate infections appears to be the result of poor planning by the BOP, the very organization charged with Mr. Thatcher's care. In light of the changed conditions at Fort Dix and for all the reasons discussed in our prior submissions, we respectfully request that Your Honor grant Mr. Thatcher's motion for compassionate release.

Respectfully submitted,

/s/Andrew Patel

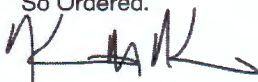
Andrew G. Patel

encl.

cc: All counsel by ECF

Application for compassionate release under 18 U.S.C. Section 3582 is denied. Mr Thatcher has not established that there are extraordinary or compelling reasons for his early release. While there is no doubting that the coronavirus presents an historic public health threat, public health officials have identified certain pre-existing conditions that increase the risk to certain individuals. Mr. Thatcher does not suffer from any of those conditions, even though he does have a history of some medical problems. Moreover, while certain facilities at Fort Dix are dealing with a rise in COVID cases, the East compound, the wing where Mr. Thatcher is housed, is not one of those facilities. Indeed, the Government has noted that there have been no positive test results in the East Compound. Finally, the Section 3553(a) factors do not favor release. Mr. Thatcher was convicted of serious crimes that, categorically speaking, presented a threat to public safety. Accordingly, the application is denied.

So Ordered.



12/9/20

¹ <https://www.bop.gov/coronavirus/index.jsp> (last referenced November 3, 2020)

Exhibit A

'I think I am going to die': Virus overtakes a prison

THE COVID-19 OUTBREAK

Joe Atmonavage *For The Star-Ledger*

The man who sleeps in the bunk above Troy Wragg has tested positive for the coronavirus, the inmate said.

So has the man to the right of his bunk and a fourth person in his room. The 39-year-old said the man who typically pushes his wheelchair has also tested positive.

Wragg is currently incarcerated at Fort Dix, a federal correctional institution in Burlington County, on charges of running a massive Ponzi scheme. He was sentenced to 22 years in federal prison in 2019, but in an interview Tuesday, he said it is beginning to feel like a death sentence as cases have popped up at the prison and are on the rise. At least 165 inmates had tested positive as of Friday afternoon, according to the Bureau of Prisons' website.

"Without question, we all feel like this is the beginning of the end," Wragg said. "It has gotten so somber and it has led to a lot of depression. I can only speak for myself and I am telling you, I think I am going to die."

Two days later, Wragg received the news that he, too, had tested positive for the virus, more than a week after being tested, he said.

There were no cases at the prison less than three weeks ago, according to records from the Bureau of Prisons. On Thursday, the BOP's website listed 59 cases among the facility's nearly 2,800 inmates. The number of cases then nearly tripled overnight.

Inmates and their families say the stark uptick occurred as the BOP began transferring inmates from a prison in Ohio that was ravaged by the virus early in the pandemic.

"I'm going to tell you right now, everyone in my room feels sick," Wragg said Tuesday. "Everyone feels sick. No one feels good. Most of the building feels like that."

Attorneys and advocates filed a class-action lawsuit during the early



As of Friday, at least 165 inmates at Fort Dix had tested positive for the coronavirus, according to the Bureau of Prisons' website. *File*

THE COVID-19 OUTBREAK

11/1/2020

months of the pandemic warning that Fort Dix was primed to be “a COVID-19 deathtrap” and was “speeding toward a public health catastrophe” due to the high concentration of inmates in close quarters. No inmates have died, according to the BOP, and the lawsuit was dismissed by a federal judge in June. But even before the shocking rise in cases, there was renewed concern.

“The Bureau of Prisons has failed to keep them safe and is putting prisoners, staff and the wider community at risk,” said Tess Borden, an attorney at the American Civil Liberties Union of New Jersey.

Over the last few weeks, the BOP has transferred a number of inmates from Elkton, a federal prison in Ohio that was devastated by the coronavirus pandemic during the spring, to Fort Dix, a sprawling prison with the largest capacity for inmates of any federal facility in the country. The U.S. Supreme Court upheld a ruling that BOP had to transfer inmates out of Elkton due to the dangerous conditions. (The BOP’s website said last week there were no active cases at Elkton, though on Friday it said three inmates and a staffer had tested positive.) According to a court filing by assistant U.S. Attorney Joseph N. Minish on Oct. 9, there were no inmates in the general population at Fort Dix who were positive with the virus.

However, Minish wrote that 13 inmates who were transferred into Fort Dix had tested positive for COVID-19. The filing says, “in accordance with the BOP COVID19 protocol, those inmates were immediately placed in isolation in a third structure on the Fort Dix campus,” and would remain there until they were negative. It does not say when the inmates were transferred, when they contracted the virus or where they were transferred in from. Visitations at the prison were allowed beginning Oct. 3, after a monthslong suspension because of the pandemic, but were halted shortly thereafter.

The BOP did not respond to questions regarding the transfers or the recent rise in cases.

Inmates and their families told NJ Advance Media that the spike in cases coincided with new inmates arriving at the facility.

“Predictably, the very same week that visits resumed and inmates arrived to Fort Dix from Elkton, the current COVID19 outbreak started,” Tommie Telfair, an inmate serving a sentence for drug charges, wrote in a court filing Tuesday.

Brian Kokotajlo, the president of AFGE Local 2001, a union representing more than 400 staff members at Fort Dix, said more than 200 inmates have been transferred in from Elkton.

“It’s like squeezing a balloon in different places,” Somil Trivedi, senior staff attorney for the ACLU, said of the transfers. “It is just going to pop in another place.”

By Oct. 12 — three days after the government said there were no cases in the general population but acknowledged 13 transferred inmates were positive with the virus — five inmates at Fort Dix tested positive, according to court documents. By Oct. 21, according to court documents, there were nine inmates positive and five staff members.

As the number of cases has increased, staff members at the prison, who come and go from the facility daily, had not been tested for the coronavirus as of Wednesday, Kokotajlo. They haven’t been tested by the federal agency a single time since the pandemic began, he added.

The BOP’s website on Friday listed eight staff members as having recently tested positive, in addition to the 165 inmates.

“It is basically a powder keg in there,” said Karen Gasper, whose son is incarcerated at Fort Dix and is now positive with the virus.

Wragg, who has epilepsy and is in a wheelchair, said he first became aware of a positive case in his building on the west side of the prison on Oct. 19, when the inmate who pushes his wheelchair was pulled from the building

for testing positive. Over the next two days, Wragg said, they tested the more than 200 inmates who live in the building.

After being tested, the inmates were returned to the general population without knowing if they had COVID-19, Wragg said. Restrictions were put in place, he said, but prison staff still put them back in rooms with up to 11 other inmates not knowing who had the virus.

'IT HAS BECOME CHAOS'

But as the results came back, Wragg said the building turned into the "wild west."

"It has become chaos," he added.

He said inmates are getting pulled out by staff constantly while others are "dropping like flies." Wragg said inmates are constantly banging on their doors seeking help.

Gaspar, whose son is serving a 10-year sentence on non-violent drug charges, found out he tested positive on Oct. 24. He was asymptomatic last week, but he has chronic bronchitis and other health issues, his mom said.

After testing positive, he told his mother that he was moved to a separate building where they are housing inmates who have tested positive. "There's no heat. It is freezing cold in here. We don't have blankets. We don't have anything," Gaspar said her son told her.

Even before the outbreak at Fort Dix, inmates have been attempting to be released under home confinement or compassionate release from the prison during the pandemic. Attorney General William Barr directed the BOP in the spring to begin identifying inmates who could be released on home confinement to limit the prison population, but attorneys and advocates have said it has not put a dent in the federal prison population.

In New Jersey, state prisons this week will begin releasing more than 3,000 inmates through emergency credits to limit the prison population and halt the spread of the virus.

In federal prison, BOP officials have blocked the release of at least 98% of inmates who have sought compassionate release, according to the Marshall Project. In response to those inmates seeking compassionate release, federal prosecutors have repeatedly argued that the "BOP has adequately addressed the risks of the spread of COVID-19," and therefore, inmates aren't facing extraordinary enough circumstances to prompt their release.

Joe Atmonavage, NJ Advance Media, atmonavage@njadvancemedia.com

"I'm 54 years old. I always said I hope I live long enough to see my son on the outside. Now, I'm hoping my son lives long enough to come home."

Karen Gaspar, whose son is incarcerated at Fort Dix and is now positive with the virus

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